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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,094	10/12/2005	Bettina Balslev Sorensen	PATRADE	8613
7590		11/07/2008		
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		EXAMINER		
		QUINN, RICHARD LEE		
		ART UNIT		
		PAPER NUMBER		
		3765		
		MAIL DATE		
		DELIVERY MODE		
		11/07/2008		
		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/544,094

Applicant(s)

SORENSEN, BETTINA BALSLEV

Examiner

RICHALE L. QUINN

Art Unit

3765

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 11, 13-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 11, 13-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 August 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Amendment

The amendment filed on 8/13/2008 has been fully considered. Claims 1 and 9 were amended. Claims 8 and 12 were cancelled and claims 14 -22 were added. Claims 1 -7, 11, 13 – 22 are currently pending. The drawing objections of 1/29/2008 have been obviated.

Specification

1. The disclosure is objected to because of the following informalities: applicant uses the abbreviation "dtex" for the term decitex. Please replace the abbreviation with the term to avoid confusion.

Appropriate correction is required.

2. Claims 15, 16, and 20 objected to because of the following informalities: applicant uses the abbreviation "dtex" for the term decitex. Please replace the abbreviation with the term to avoid confusion.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 – 4, 6, 7, 9 – 11, 13 – 16, 19 and 20 are rejected under 35

U.S.C. 102(b) as being anticipated by Browder, Jr. (US 6,276,175). The device of Browder, Jr. discloses a clothing article capable of being worn by a person having an ostomy hernia, the clothing article is made for exerting compression (Column 3, lines 35 – 40) and is intended to be disposed around the lower portion of the body, the clothing article is characterized by knitting a seamless tubular (column 2, lines 66 - 67) which is made with an anatomic fit in a predefined size and shape and establishing a firm, elastic (Column 3, lines 26- 28) structure. The device of Browder, Jr. is made on a body size circular knitting machine (Column 2, lines 25 -26) and is selectively fixed on the machine form having a predetermined size and shape as the item is being constructed and is sewn together forming a panty brief with a lower body area, groin area and leg openings (Figures 1 and 2) after the garment has been fixated on a form. The extension of the garment is performed with varying intensity (Column 2, lines 30 –34) for establishing varied extension or elasticity and firmness in the article giving varied compression when the clothing article is placed on the body. Elastic yarns are formed along designated courses such that the elastic tension is even through out the garments and therefore would make up approximately 50% of the garment (Column 2, lines 25- 29). It is noted that the recitation "for producing compression of between 15 to 5 mmHg" is a functional recitation. The device of Browder, Jr. meets all the structural limitations claimed by applicant and is therefore interpreted to perform in the same manner as the claimed apparatus having a compression of between 15 – 5 mmHg and would have a material that displays a force/elongation curve including a largely flat curve pattern as

recited by applicant. The device of Browder, Jr. discloses elastic yarn that are an elasthane (Column 4, line 5) and the elastic yarn having a thickness of 100 to 350 decitex or 150 - 250 decitex (Column 4, line 5). It is noted that a 140 denier yarn I is the equivalent to a 155.6 decitex yarn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Browder, Jr. in view of Sinigagliesi (US 2,736,036). The device of Browder, Jr. substantially discloses the claimed invention but is lacking a groin area having an aperture. The device of Sinigagliesi discloses a tubular knit garment having an aperture (13) in the groin area. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the device of Browder, Jr. by utilizing the aperture taught by Sinigagliesi in order to provide access to the genitals from the exterior surface of the garment (column 2, lines 55 – 68).

4. Claims 17, 18, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Browder, Jr. The device of Browder, Jr. substantially discloses the claimed invention but is silent as to the weight per square meter of compression on the user's body. The USPTO office does not a laboratory to perform testing, and since the

device of Browder, Jr. meets all of the structural recitations as claimed by applicant it is interpreted to perform in the same manner as the claimed invention, a weight per square meter of between 250 and 450g/m². The applicant does not provide criticality in the specification to the specific ranges claimed and therefore the prior art referenced meets the cited limitations.

Response to Arguments

5. Applicant's arguments filed 8/13/2008 have been fully considered but they are not persuasive.
6. In response to applicant's argument that is noted intended for use for a person having a hernia or an ostomy hernia, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.
7. Applicant argues that the specific compression is not a functional recitation. The compression is a function of the elastic yarns. The elastic yarns of the claimed invention and the prior art are the same and therefore interpreted to perform in the same manner. Applicant has not recited a specific fiber weight or fabric structure which performs the claimed function.
8. Applicant states the device of Browder does not disclose a 50% elastic construction. The device of Browder discloses elastic yarns that are evenly distributed throughout the garment and therefore interpreted to make up approximately 50%.

Moreover, Browder specifically discloses elastic yarn being repeated at least every four course and would at least account for 25% of the garment.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **RICHALE L. QUINN** whose telephone number is (571)272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L Quinn
Examiner
Art Unit 3765

/R. L. Q./
Examiner, Art Unit 3765

/Gary L. Welch/
Supervisory Patent Examiner, Art Unit 3765